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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/675,057
Filing Date: September 30, 2003
Appellant(s): KARAOGUZ ET AL.

Joseph M. Butscher
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 5, 2009 appealing from the Office action mailed June 11, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Copending Application Serial Number (10/675467) "Method and System For Personal Channel Programming in a Media Exchange Network" contains subject matter similar to the instant application and is currently before the Board of Patent Appeals and Interferences.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0054752	Wood et al.	05-2002
7,103,905	Novak	09-2006
6,774,926	Ellis et al.	08-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims **34**, **37**, & **40** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to Claims **34**, **37**, & **40**, the claimed "*pushing at least a portion of said populated channel to said second location in exchange for at least a portion of a second populated channel guide associated with a second media channel created at*

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said second location", does not appear to be supported by the specification as originally filled. In particular, the specification is unclear with respect to the claimed reciprocal relationship between the pushed media in exchange for having received a created media channel.

The claim is subsequently being interpreted as indicating that a second location has the same functionality as a first location, whereby a populated channel guide may be pushed from a second location to a first location in the same manner in which a populated channel guide may be pushed from a first location to a second location. For the purpose of expediting the processing of the application, Claims **34, 37, & 40** have been rejected in view of the prior art (see below) based on a broader interpretation that meets the claimed subject matter as interpreted by the Examiner (as explained above).

Claims **1-33, 35, 36, 38, and 39** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wood et al. (US Patent Application No. 2002/0054752 A1)** in view of **Novak (US Pat No. 7,103,905)**.

With respect to Claim **1**, the claimed "*creating a channel guide for a new channel that supports communication of media, said new channel comprising a media channel*" is met by Wood et al. that teach the recording of select media programs and the creation of channel listings, of these 'personal channels', on a channel guide for the organization of the recorded programs (*Abstract; Fig.10; paragraphs [0010], [0039], [0059], & [0061]*).

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The claimed “*populating, at a first location, said channel guide for said new media channel with information identifying mixed media content, wherein said populated channel guide may be pushed to a second location*” is met in part by Wood et al. that teach the creation of channel listings of recorded programs by a user at a 1st location and the use of the channel guide information corresponding to these programs (*paragraphs [0059] & [0064]*). The Wood et al. reference does not explicitly teach the use of media from another source other than that of broadcast media or the ability to push said populated channel guide to a 2nd location. However, in the same field of endeavor, Novak teaches the creation of channels containing personal media content from a provider (upload source **122**) that will be provided to an end subscriber (set top box **152** & television **154**) in a similar way as that of broadcast media, with the addition of a synthetic channel listing, containing schedule & program information, in the program guide of the end subscriber (*Abstract; col.2, lines 9-14; col. 3, lines 40-45; col. 6, a lines 51-55; col. 7, lines 16-21; col.10, lines 56-67; col.11, lines 60-64; col. 12, lines 10-26, lines 39-58; & Figs.1,2,8,& 9*).

It would have been obvious to one skilled in the art at the time the invention was made to have combined the creation of channel listings for the organization of recorded broadcast media, as taught by the Wood et al. reference, with a system allowing a user to receive personal media in the same manner as broadcast media in order to provide a user a more complete and enjoyable television viewing experience. A person of ordinary skill in the art would have been motivated to make such a modification to the Wood et

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al. reference in order to permit the creation of a media channel containing not only regular broadcast media, but also of personal media.

With respect to the claimed *“and one or both of: displaying said information identifying said mixed media content within said channel guide; and/or communicating said mixed media content via said new media channel”* is met by Wood et al. that teach the displaying of the personal channel content by way of an EPG (Fig.10; paragraphs [0061], & [0064]).

With respect to Claim **2**, the claimed *“wherein said mixed media content comprises at least one personal media content and at least one broadcast media content”* is met as previously discussed with respect to Claim **1** above.

With respect to Claim **3**, the claimed *“comprising receiving said at least one broadcast media content from at least one third (3rd) party broadcaster”* is met by Wood et al. that teach the recording of broadcast media content from at least one third (3rd) party broadcaster (Figs.7-10, paragraph 0032).

With respect to Claim **4**, the claimed *“comprising storing said received at least one broadcast media content”* is met by Wood et al. that teach the use of video storage **105** in storing media programs (paragraphs [0028] & [0029]).

With respect to Claim **5**, the claimed *“comprising linking said stored at least one broadcast media content to a portion of said information identifying said mixed media content which corresponds to said at least one broadcast media content”* is met by Wood et al. that teach the use of an EPG in listing information related to recorded media programs scheduled for viewing (Fig.10; paragraphs [0061] & [0064]).

With respect to Claim **6**, the claimed “*comprising storing at least a portion of said at least one personal media content*” is met by Wood et al. that teach the use of video storage **105** in storing media programs (*paragraphs [0028] & [0029]*).

With respect to Claim **7**, the claimed “*comprising identifying said at least said one personal media content*” is met by Wood et al. that teach the recording of metadata associated with the recorded media program, from the channel guide, so that the user may easily identify the recorded show (*paragraph [0040]*).

With respect to Claim **8**, the claimed “*comprising associating said identified at least one personal media content with a portion of said information identifying said mixed media content which corresponds to said at least one personal media content*” is met by Wood et al. that teach the use of an EPG in listing information related to recorded media programs scheduled for viewing (*Fig.10, paragraph [0061] & [0064]*).

With respect to Claim **9**, the claimed “*scheduling within said created channel guide, at least one of said at least one personal media content and said at least one broadcast media content for presentation*” is met by Wood et al. that teach the scheduling of the recorded media programs for viewing on a ‘personal channel’ (*Fig.10; paragraphs [0059], [0061], [0067]*).

With respect to Claim **10**, the claimed “*comprising assigning one or both of a date and/or a time within said created channel guide for said presentation of said at least one personal media content and said at least one broadcast media content*” is met by Wood et al. that teach the use of an EPG in listing ‘personal channels’ with recorded

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media programs, where the EPG is capable of assigning a date and a time to the channel listings (*Fig. 10; paragraph [0061]*).

Claim **11** is met as previously discussed with respect to Claim **1**, due to its interpretation as being a machine-readable storage of the method of Claim **1**.

Claim **12** is met as previously discussed with respect to Claim **2**.

Claim **13** is met as previously discussed with respect to Claim **3**.

Claim **14** is met as previously discussed with respect to Claim **4**.

Claim **15** is met as previously discussed with respect to Claim **5**.

Claim **16** is met as previously discussed with respect to Claim **6**.

Claim **17** is met as previously discussed with respect to Claim **7**.

Claim **18** is met as previously discussed with respect to Claim **8**.

Claim **19** is met as previously discussed with respect to Claim **9**.

Claim **20** is met as previously discussed with respect to Claim **10**.

Claim **21** is met as previously discussed with respect to Claim **1**, due to its interpretation as being a system of the method of Claim **1**. In addition, Wood et al. teaches the use of processor **101** in a video data recorder, which enables the recording of media programs and the creation of 'personal channels' (*Fig. 1; paragraphs [0010] & [0024]*).

Claim **22** is met as previously discussed with respect to Claim **2**.

Claim **23** is met as previously discussed with respect to Claim **3**.

Claim **24** is met as previously discussed with respect to Claim **4**.

Claim **25** is met as previously discussed with respect to Claim **5**.

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Claim **26** is met as previously discussed with respect to Claim **6**.

Claim **27** is met as previously discussed with respect to Claim **7**.

Claim **28** is met as previously discussed with respect to Claim **8**.

Claim **29** is met as previously discussed with respect to Claim **9**.

Claim **30** is met as previously discussed with respect to Claim **10**.

With respect to Claim **31**, the claimed "wherein said at least one processor is one or more of a media processing system processor, a media management system processor, a computer processor, media exchange software platform processor and/or a media peripheral processor" is met by Wood et al. that teach the use of processor **101** in a personal video recorder (Fig.1; paragraphs [0010] & [0024]).

With respect to Claim **32**, the claimed "wherein populating is based on one or both of a user profile and/or a request for at least a portion of said mixed media content" is met by Wood et al. that teach the populating of channel listings of recorded programs based upon a criteria database 104 that stores user specified criteria for the selection of shows for recording and for the personal channel they are to be stored in (paragraphs [0042] & [0059]).

With respect to Claim **33**, the claimed "*comprising pushing at least a portion of said populated channel to said second location*" is met by Novak that teaches the transmittal of the creation of channels containing personal media content from a provider (upload source **122**) that will be provided to an end subscriber (set top box **152** & television **154**) in a similar way as that of broadcast media, with the addition of a synthetic channel listing, containing schedule & program information, in the program

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guide of the end subscriber by an automatic process or by the use of a token(*Abstract; col.2, lines 9-14; col. 3, lines 40-45; col. 6,a lines 51-55; col. 7, lines 16-21; col.9, lines 44-51; col.10, lines 56-67; col.11, lines 60-64; col. 12, lines 10-26, lines 39-58; & Figs.1,2,8,& 9*).

Claim **35** is met as previously discussed with respect to Claim **32**.

Claim **36** is met as previously discussed with respect to Claim **33**.

Claim **38** is met as previously discussed with respect to Claim **32**.

Claim **39** is met as previously discussed with respect to Claim **33**.

Claims **34, 37, & 40** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wood et al. (US Patent Application No. 2002/0054752 A1)** in view of **Novak (US Pat No. 7,103,905)** as applied to claims **1, 11, & 21** above, and further in view of **Ellis et al. (US Patent No. 6,774,926 B1)**.

With respect to Claims **34, 37, & 40**, the claimed "comprising pushing at least a portion of said populated channel to said second location in exchange for at least a portion of a second populated channel guide associated with a second media channel created at said second location" is not specifically met by the Wood et al. reference in view of the Novak reference. However, in the same field of endeavor, Ellis et al. teach a system in which individual contributors may create personal television channel programming, whereby more than one contributor, at separate locations, have the ability to upload personal programming and to push/receive personal television channel programming to/from other locations (*Abstract; Figs. 1-3, 7, & 8; col.1, lines 25-35;*

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col.2, line 65 to col.3, lines 3, 19-29; col.5, lines 23-48; col. 7, lines 27-30; col.9, lines 61-67).

It would have been obvious to one skilled in the art at the time the invention was made to have combined the creation of channel listings for the organization of recorded broadcast media & personal media, as taught by the Wood et al. reference in view of the Novak reference, with that of the Ellis et al. reference in order to allow a user to both push/receive the created channel listing & thereby add more functionality to the system. A person of ordinary skill in the art would have been motivated to make such a modification to the Wood et al. reference, in view of the Novak reference, in order to allow a greater level of distribution of mixed media channel listings among users.

(10) Response to Argument

The Examiner respectfully disagrees that the rejection should be reversed. Only those arguments having been raised are being considered and addressed in the Examiner's Answer. Any further arguments regarding other elements or limitations not specifically argued or any other reasoning regarding deficiencies in a prima facie case of obviousness that the Appellant could have made are considered by the Examiner as having been conceded by the Appellant for the basis of the decision of this appeal. They are not being addressed by the Examiner for the Board's consideration. Should the panel find that the Examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully

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requested that the case be remanded to the Examiner for further explanation prior to the rendering of a decision.¹

Discussion of Rejection of Claims **34, 37, & 40** under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement:

It is the Examiner's position that there is insufficient support within the disclosure of the instant application for the following language, in particular the "in exchange for" clause of Claims 34, 37, and 40:

"pushing at least a portion of said populated channel to said second location in exchange for at least a portion of a second populated channel guide associated with a second media channel created at said second location."

Appellant has provided the following citations for support of the limitations of Claim 34, which contains the "in exchange for" limitation (Revised Appeal Brief Page 4, Footnote 21 and Page 8). Page 9 Lines 1-25 (Paragraphs [34-35]) describe "media exchange network 20" of Figure 1A containing a first PC 1 and a second PC 7. Page 11 Lines 12-20 (Paragraph [40]) describe "communication infrastructure 4", which connects the first PC 1 and the second PC 7. Page 18 Lines 4-25 (Paragraphs [58-61]) further describe the "media exchange network", which "also allows a user to construct personal media channels that comprise his personal digital media (e.g. captured digital pictures, digital video, digital audio, etc.), request that third-party media channels be constructed from third-party media, and access the media channels pushed to him by other users on the media exchange network". Page 20 Lines 12-18 (Paragraph [69]) describe

¹ See 37 CFR 41.50(a)(1) and MPEP 1211.

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“communication infrastructure 304” of Figure 3, which is similar to that of “communication infrastructure 4”.

The Examiner interprets the “in exchange for” limitation to be drawn to a process of mutual transaction of media between two or more parties. It is the Examiner’s position that Applicant’s specification only describes in sufficient detail the distribution of media in one direction using the method of “pushing” (i.e. claimed from “first location” to “second location”) and that the concept of “pushing” media using a mutual exchange from each geographic location is not supported by the disclosure. In view of Appellant’s specification, particularly Paragraphs [58-61], the Examiner construes the “in exchange for” aspects of Claims 34, 37, and 40 to be directed toward a device capable of interacting with a bidirectional communication network (such as a personal computer connected to the Internet) for the purpose of receiving and transmitting digital media. However, it is the Examiner’s position that the act of “pushing” media is only described in sufficient detail to support the “exchange” of media from a “first location” to a “second location”, but not from a “second location” to a “first location”.

Discussion of Rejections of Claims 1-2, 11-12, and 21-22 under 35 U.S.C. 103(a) as being unpatentable over Wood in view of Novak.

The Examiner submits the following interpretation of Claims 1, 11, and 21 with an elaboration of the respective citations in Wood and Novak regarding these claims. The Examiner has previously presented the following clarifying comments²:

² September 10, 2008 Advisory Action Page 2

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Applicant presents that the combination of Wood (US PGPUB 2002/0054752) in view of Novak (US PAT 7,103,905) regarding the Claim 1 limitation "populating, at a first location, said channel guide for said new media channel with information identifying mixed media content, wherein said populated channel may be pushed to a second location" [is not taught] because neither reference teaches "a single channel that includes both broadcast and personal media" (with particular reference to the "mixed media" limitation, as stated in Reply³ Pages 9-10). The Examiner respectfully disagrees.

The Wood reference is relied upon to teach a program guide containing broadcast media that is recorded into personal channels (Wood Paragraphs [0059,0064]; with further reference to Final Office Action⁴ Pages 4 and 5). The Novak reference is relied upon to teach a program guide containing personal media, which has been scheduled and uploaded by a user from the user's equipment, that is "pushed" to a second location and presented at the second location in a program guide containing both broadcast media and personal media (Novak Fig. 9, with further reference to Fig. 7, as described in Col. 12 Lines 10-26 and 39-58; additional reference is made to Final Office Action Pages 4 and 5). It is therefore the Examiner's position that in view of the teachings of Wood and Novak one of ordinary skill in the art at the time of the invention would be motivated to push both broadcast media and personal media to a second location "in order to provide a user a more complete and enjoyable television viewing experience" by permitting "the creation of a media channel containing not only regular broadcast media, but also personal media" (as stated in Final Office Action Page 5).

The Examiner additionally notes the following regarding the interpretation of Claim 1 in view of Claim 2 (similarly Claim 11 in view of 12 and Claim 21 in view of Claim 22):

"broadcast media" and "personal media" are not required by the language of independent Claims 1, 11, and 21; which merely state "mixed media content". The "mixed media content" in each independent claim is only further defined to be "broadcast media" and "personal media" in view of Claims 2, 12, and 22. The Examiner has addressed the limitations of Claims 1-2, 11-12, and 21-22 together only in light of the specification and submits that the claim language "mixed media content" is broad enough to be reasonably construed as media of different formats or types, such as media content containing still pictures (JPEG), audio files (.wav), and video files (MPEG) (for example as Novak discusses in Col. 11 Lines 1-28).

³ August 28, 2008 After Final Amendment

⁴ June 11, 2008 Final Office Action

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The primary reference, Wood, is used to address the Claim 1, 11, and 21 limitation of “populating” step by establishing a teaching of “broadcast media” (i.e. “Friends”, “Tonight”, “Nature” from broadcast stations such as TBS or NBC) locally organized in a personal media channel created by the user (as shown in P100, P101, P102 of Fig. 10 and described in Paragraphs [0059,0060]). The secondary reference, Novak, is used to address the “populating” step by establishing a teaching of “personal media” (i.e. “Baby’s First Step”, “Mom’s Birthday”, “Graduation” of Figs. 6 and 7, as introduced in Col. 10 Line 36—Col. 11 Line 15) locally organized in a personal media channel created by the user (as shown by the scheduling aspects of Figs. 6 and 7 with particular reference to Display 710, as described in Col. 11 Lines 52-67, Col. 12 Lines 35-41).

As stated in Final Office Action, “[a] person of ordinary skill in the art would have been motivated to make such a modification to the Wood et al. reference in order to permit the creation of a media channel containing not only regular broadcast media, but also personal media” for the purpose of “provid[ing] a user a more complete and enjoyable television viewing experience.” The Examiner further submits that both Wood and Novak teach similar techniques of locally storing media content and allowing a user to organize this locally stored content into “personal channels” of an electronic program guide (i.e. Fig. 10 of Wood and Fig. 7 of Novak). It is the Examiner’s position that one of ordinary skill would recognize these similar techniques to be usable together because Wood (“broadcast media”) and Novak (“personal media”) teach that the locally stored

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content can be of the same format (i.e. MPEG video, as Wood discusses in Paragraph [0033] and Novak discusses in Col. 11 Lines 1-15).

Appellant presents that the above cited Claim 1, 11, and 21 limitation of “populating, at a first location, said channel guide for said new media channel with information identifying mixed media content” is not rendered unpatentable because “neither Wood, nor Novak alone or in combination with one another discloses a signal channel that includes mixed programming, such as both broadcast and personal media” (Revised Appeal Brief Section II.A, Pages 9-11). The Examiner respectfully disagrees.

It is the Examiner’s position that the Claim 1 step of “populating” is referencing the claimed “channel guide” (i.e. “populating, at a first location, the channel guide...” and not the claimed “new media channel”) with information identifying mixed media content. Appellant has identified Figure 1B of the instant application as supportive of the claimed “channel guide” (Footnote 8 of Revised Appeal Brief Page 3). Examiner further submits that the channel guide of Figure 1B contains “personal media channels” (i.e. Family Vacations, Kid’s Sport, My Life, My Son’s Life, Kids Music) and “3rd Party Commercial Broadcast Channels” (i.e. FOX and NBC), however there is no single channel that contains both personal and broadcast media displayed in the channel guide of Figure 1B (as Appellant argues regarding “mixed media” limitation of Claim 1, Revised Appeal Brief Pages 10-11).

The Examiner acknowledges Appellant's reference to Page 4 Lines 6-7 of the instant application describing “mixed media content may comprise at least one personal media content and at least one broadcast media content that may be communicated via

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a mixed media channel” (Brief Page 3 Footnote 10) and Appellant’s reference to the interface of Figure 1C displaying “mixed media” as described on Page 15 Lines 22-28 and Page 17 Lines 5-7 (Brief Page 4 Footnote 20 identifying support for Claim 2).

However, the Examiner notes that Claim 2 does not recite a “mixed media channel” or a “single channel that includes mixed programming” and merely further defines “mixed media content” to comprise “personal” and “broadcast” media content.

The Examiner additionally submits that even if, although not construed to (as presented above), the claim language of Claims 1-2, 11-12, and 21-22 required “a signal channel that includes mixed programming”, the combination of Wood and Novak could still be used to demonstrate this concept. It is the Examiner’s position that one of ordinary skill in the art would recognize the similar teachings of Wood and Novak are usable together to demonstrate both broadcast and personal media programming in the same channel. Particularly, both references teach the local storage and organization of MPEG video (as Wood discusses in Paragraph [0033] and Novak discusses in Col. 11 Lines 1-15). Wood discusses the organization of locally stored MPEG video in terms of “broadcast” content, Novak discusses the organization of locally stored MPEG video in terms of “personal” content, and each reference discusses providing this MPEG video content in a channel of an electronic program guide (i.e. Fig. 10 of Wood and Fig. 7 of Novak). The Examiner therefore submits that, if required, the similar techniques of Wood and Novak can be used together to demonstrate the organization of broadcast and personal content within the same channel of an electronic program guide. One of ordinary skill would be motivated to implement this combination of techniques in order to

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provide the end user with benefits such as reducing the amount of channels displayed in the electronic program guide by consolidating the broadcast and personal media content.

As the Examiner has presented above, Claim 1 has been construed to require populating the channel guide with information identifying mixed media content. Therefore, the Examiner submits that Appellant's Claim 1 step of "populating" does not require the populating of a single channel (as Appellant argues in Appeal Brief Page 10), but rather the populating of a channel guide (i.e. an Electronic or Interactive Program Guide) with mixed media content; where mixed media content is further defined to be personal media content and broadcast media content in Claim 2. The Examiner therefore submits that the combination of Wood and Novak does in fact teach the Claim 1, 11, and 21 limitation of "populating, at a first location, said channel guide for said new media channel with information identifying mixed media content".

Discussion of Rejections of Claims 3-10, 13-20, 23-33, 35, 36, 38, and 39 under 35 U.S.C. 103(a) as being unpatentable over Wood in view of Novak.

No additional arguments are presented over and above those previously addressed. Accordingly, the rejection is believed to be proper for the previously addressed reasoning.

Discussion of Rejections of Claims 34, 37, and 40 Rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al. in view of Novak, and further in view of Ellis et al.

Appellant presents that "neither Ellis, nor the other cited references (alone or in combination with one another), describes, teaches, or suggests pushing at least a portion of said populated channel to said second location in exchange for at least a portion of a second populated channel guide associated with a second media channel created at said second location" (Revised Appeal Brief Pages 12-13).

The Examiner has previously submitted the following clarifying comments⁵:

Applicant further presents that the combination of Wood and Novak in view of Ellis (US PAT 6,774,926 B1) regarding the Claim 34 limitation "pushing at least a portion of said populated channel to said second location in exchange for at least a portion of a second populated channel [guide] associated with a second media channel created at said second location". In view of Applicant's arguments (Reply⁶ Pages 10 and 11), the Examiner can not determine what aspects of the cited limitation the combination of Wood, Novak, and Ellis are deficient in teaching. For the purpose of this Office Action, the Examiner will assume that Applicant's position is that Ellis does not teach the act of "pushing" media because "Ellis discloses that the video may be 'distributed' as it is being created (i.e., in 'real time')" (as stated in Reply Page 11; with further reference to Ellis Col. 7 Lines 33-37). The Examiner respectfully disagrees.

The Ellis reference is relied upon to teach the "in exchange for" limitation of Claim 34 because Ellis teaches "the ability... to push/receive personal television channel programming to/from other locations" (Final Office Action⁷ Page 10; with further reference to Ellis Col. 5 Lines 15-22, 60-67, and Col. 6 Lines 23-30). The Examiner also notes the "pushed/pushing" limitation as been addressed with the combination of Wood and Novak (as discussed above). Therefore, the Examiner upholds the rejection of Claims 34, 37, and 40.

The Examiner first reiterates that "pushed/pushing" limitation was addressed in reference to Claim 1 and specifically with the teachings of the Novak reference (Final Office Action Pages 4-5; with further reference to Novak Col. 2 Lines 9-14, Col. 3 Lines 40-45, Col. 7 Lines 16-21, Col. 10 Lines 59-67, and Col. 11 Lines 60-64). In particular, Novak discloses the following regarding media distribution:

In this manner, the playing of the media objects on the TCP/IP channel appears similar to a normal television channel to the end user. That is, Joe's TV Channel is a personal channel that can be provided to and selected by end users, and the end users can tune to the uploaded media

⁵ September 10, 2008 Advisory Action Page 2

⁶ August 25, 2008 Amendment After Final

⁷ June 11, 2008 Final Office Action

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program(s) accessible via this channel and view them similarly to regular television programming.
(Novak Col. 11 Lines 58-64)

This concept is also described by Novak in Col. 2 Lines 9-14 and Col. 3 Lines 40-45. In other words, an individual at Upload Source 122 of Figure 2 (claimed “first location”) has complete control over the nature in which the media is presented to the end-user. As Novak describes in Col. 10 Lines 59-67, the uploading user is provided the interface of Figure 7 in order to configure program aspects such as the time, the date, the channel, the duration, and the repetition frequency in which the media channel (“Joe’s TV Channel”) is presented to the end user at STB 152 of Figure 2 by way of EPG 153 of Figure 9. The process of “pushing” media is further demonstrated in Figure 1 of Novak.

With reference to Steps 1104 and 1106 Fig. 11 (“Upload Media Objects” and “Organize Media Objects into Media Program(s)”), Upload Source 122 provides access to information related to the media objects by way of Interface 702 of Figure 7 for the creation of “Joe’s TV Channel” (which Novak also identifies as a ‘synthetic channel’ and ‘TCP/IP channel’), as Novak disclosed in Col. 13 Lines 35-47. In Step 1110 of Fig. 11 (“Subscribe End User”), the ‘synthetic channel’ is presented to the end-user, wherein the end-user is subscribed to the media channel and provided access to the EPG 153, as Novak discloses in Col. 13 Line 59—Col. 14 Line 20.

The Examiner notes that “Joe’s TV Channel” 908 is presented to the end-user in EPG 153 of Figure 9 according to the schedule established by Upload Source 122 in Step 1104, as Novak discloses in Col. 12 Line 62—Col. 13 Line 3. In particular, Novak discloses that “EPG data can include the media program settings specified by the Upload Source 122 using the Interface 702 of Fig. 7” as described in Col. 14 Lines 49-

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51. Novak describes that media within a synthetic channel, such as “Joe’s TV Channel” 908 of Figure 9, “can be scheduled for replay or repeat...” and “[t]he replay can be scheduled explicitly by the individual, or done automatically by software of the Interface 702” see Col. 11 Lines 1-15.

Appellant has provided Page10 Lines 26-27 (First two lines of Paragraph [38]) of the instant application as supportive of the claim 1 limitation “wherein said populated channel guide may be pushed” (Revised Appeal Brief Page 3, Footnote 14). Page 10 Lines 26-27 of the instant application states: “The media exchange software platform 11 may provide functions and capabilities, which may comprise, but are not limited to media “push” capability...” The Examiner additionally submits Paragraph [65] of the instant application (i.e., Page 19, Lines 14-17) as the most exemplary passage demonstrating the intended meaning of the word “push”:

“The media exchange network allows users to effectively become their own broadcasters from their own homes by creating their own media channels and pushing those media channels to other authorized users on the media exchange network...”

It is the Examiner’s position that Paragraph [65] of the instant application demonstrates that users “becoming their own broadcasters” (i.e. broadcasting) is equivalent to the act of “pushing” media channels because a user can create their own media channel (i.e. determine date and time of broadcast, which traditionally only the broadcaster has control over) and distribute this media channel to other authorized users in accordance with the broadcast schedule (i.e. dictating when the end user has access to the channel).

The Examiner further submits the following definition, as an example of the ordinary meaning at the time of the invention, of the word “push”:

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(1) In client/server applications, to send data to a client without the client requesting it. The World Wide Web is based on a *pull* technology where the client browser must request a Web page before it is sent. Broadcast media, on the other hand, are push technologies because they send information out regardless of whether anyone is tuned in.

Increasingly, companies are using the Internet to deliver information push-style. Probably the oldest and most widely used push technology is e-mail. This is a push technology because you receive mail whether you ask for it or not -- that is, the sender *pushes* the message to the receiver. (webopedia.com⁸)

The Examiner particularly points out the association of the words "broadcast media" with "push technologies" in the above definition. In addition, it is the Examiner's position that the above definition is in accordance with exemplary Specification Paragraph [65] and the Examiner's interpretation of Appellant's intended use for the word "push." Furthermore, the Examiner notes that the above reference also identifies a difference between the words "push" and "pull", wherein "pull technologies" are characterized in that a "client browser must request", and wherein "push technologies" are characterized in that "they send information out regardless of whether anyone is tuned in" or "without the client requesting it."

In view of the above teachings, the Examiner submits that Novak clearly demonstrates a "customized media channel" in the form of Joe's TV Channel 908 of Figure 9. In addition, the Examiner submits that the Upload Source of Novak pushes the synthetic channel (i.e. Joe's TV Channel) to an end user because it is the Upload Source, not the end-user, which determines the schedule of media to be presented. The Examiner also submits that the definition of "push", as equated above to television broadcasting, is in accordance with Novak's teachings of a synthetic channel that can

⁸ www.webopedia.com, "Push", Jupitermedia Corporation, January 25, 2002, Accessed June 1, 2009 <<http://web.archive.org/web/20020913072841/http://www.webopedia.com/TERM/p/push.html>>.

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be provided to and selected by end-users similarly to regular television programming.

In view of the above reasoning, the Examiner submits the Novak does in fact teach the limitation "wherein said populated media guide may be pushed a second location" as recited in Appellant's Claims 1, 11, and 21 and argued by Appellant regarding Claims 34, 37, and 40.

As best understood by the Examiner (see above discussion of 35 U.S.C. 112, first paragraph rejection), the Ellis reference has been provided to supplement the teachings of Wood and Novak to address Appellant's Claim 34 limitation of pushing a populated channel "in exchange for" a second populated channel from the second location. In particular, Ellis discloses the exchange of media content by way of Set-top Box 62 that can receive and transmit video programming and data via Connection 64 (as disclosed in Col. 5 Lines 15-21 and shown in Fig. 3). It is the Examiner's position that the system of Ellis is in accordance with Appellant's "media exchange network" and that Ellis's disclosure of a Set-top Box that can "receive and transmit" video and data is in accordance with the Page 18 Lines 4-25 of the instant application (Paragraphs [58-61]). The Examiner has presented (Final Office Action Page 10) that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wood and Novak with the "receiv[ing] and transmit[ting]" aspects of Ellis in order to allow for a greater level of distribution of mixed media channel listings among users.

Therefore, the Examiner submits that the combination of Wood, Novak, and Ellis do in fact address the Claim 34 limitation of "pushing at least a portion of said populated

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channel to said second location in exchange for at least a portion of a second populated channel guide associated with a second media channel created at said second location”.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Patrick A Ryan/
Examiner, Art Unit 2427

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